**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
CIVIL **REVISION APPLICATION NO.464 OF 2007**
**IN**
**R.A.E. SUIT NO.3364 OF 1990**

Mr. Ravi Kishanchand Seth ..Applicant.
Vs.
The Trustees of Parsi Panchayat Funds
& Properties & Ors. ..Respondents.

Mr.Q.S.Godbole h/for N.N.Vaishanava & Co., adv. for the Applicant.

Mr.P.S.Dani, adv. for the Respondents.

**CORAM : J.H.BHATIA, J.**
**DATE : NOVEMBER 21, 2007.**

P.C.:

1. Heard the learned counsel for the Parties.

2. The plaintiffs, who are the respondent nos.1 to 8, are admittedly the owners and the landlords of the suit properties. The respondent no.9, who is the original defendant no.1 was inducted as tenant in the suit premises, which is a garage for parking of the cars. According to the plaintiffs, the defendant no.1 had not used the premises for the purpose for which the same was let out. She had inducted the defendant no.2, who is the revision applicant, unlawfully as subtenant and the garage was being used for commercial purposes and thus, there was change in user. The defendant no.1 did not file written statement and did not contest the

suit. The suit was filed in the year 1990. However, the defendant no.2 was impleaded in the year 2001 as a defendant. In the year 2001, he contested the petition on several grounds including that of limitation. The trial Court upheld the plea of the plaintiffs and rejected the plea of the defendant no.2 and passed the decree for eviction in favour of the plaintiffs on each of the three grounds. The judgement was challenged by the defendant no.2 in Appeal No.350 of 2006. The learned Appellate Bench of the Small Cause Court after hearing the parties gave a finding that the premises have not been used, without reasonable cause, for the purpose for which they were let out for a continuous period of six months immediately preceding the date of the suit. The learned Appellate Bench also held that the defendant no.1 had unlawfully sublet the premises to the defendant no.2. However, the learned appellate bench did not approve the findings of the trial Court that the defendant no.1 had changed the user of the suit premises from garage to commercial purposes. Plea of limitation taken by the defendant no.2 about eviction was rejected even by the appellate bench.

3. Mr.Godbole the learned counsel for the applicant/defendant no.2 vehemently contended that there is conflict in the findings of the appellate bench in respect of issue nos.1 and 3. However, after

discussion at bar and after going through the judgments of the Courts below, it is clear that the defendant no.2 was inducted as subtenant by the defendant no.1 in the year 1978, even according to the pleadings of the defendants. It appears that during the evidence, oral evidence was tried to be led by the defendant no.2 that he was inducted as subtenant in the year 1971, but that evidence, being contrary to the pleadings, was rightly rejected by the Courts below. It was not the case of the defendant no.2 that the defendant no.1 had sublet the premises to the defendant no.2 as per the contract with the plaintiffs or with the written permission for that purpose. Therefore, subletting of the premises by the defendant no.1 to the defendant no.2 after the Bombay Rents, Hotel Lodging House Rates Control (Amendment) Act, 1973 is illegal. The original Act has been amended by the Amendment Act, 1973. Section 13(1)(e) of the Act specifically provided that the landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant has, since the coming into operation of this Act, unlawfully sublet or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, unlawfully given on licence, the whole or part of the premises or assigned or transferred his interest therein. In view of this legal provision and the facts of the case, no fault can be found in respect of

findings on issue no.2. If the decree for eviction can stand even on one of the grounds, no fault can be found with the decree. In my considered opinion, in the given circumstances, there is no substance in the present revision.

4. In the result, revision stands dismissed.

5. On request made by the learned counsel for the applicant/defendant no.2 and with consent by the learned counsel for the plaintiffs/respondents, decree shall remain stayed for a further period of eight weeks subject to condition that the defendant no.2/applicant shall not part with the possession or shall not create any third party interest in the said premises.

**[J.H.BHATIA, J.]**